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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1963

No. 60

JAMES RUSSELL ROBINSON, ET AL.,
APPELLANTS,

vs.

FLORIDA.

APPEAL FROM THE SUPREME COURT OF THE STATE OF FLORIDA

FILED JANUARY 16, 1963
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SUPREME COURT OF THE UNITED STATES

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[fol. 3]

IN THE CRIMINAL COURT OF RECORD, OF DADE COUNTY, IN AND FOR DADE COUNTY, STATE OF FLORIDA

THE STATE OF FLORIDA,

vs.

JAMES RUSSELL ROBINSON, JOSEPH PRICE PERKINS, MARVIN EDISON ROBINSON, THOMAS VAWN ROLAND, JAMES H. LAUE, THOMAS WALTER GAITHER, BARRY M. COHEN, ANGELINE E. BUTLER, HENRY PRINGLE, BERNARD LAFAYETTE, OLIVER WILLIAM ST. PEE, LEON EVERETTE BAILEY, DOROTHY R. MILLER, PATRICIA STEPHENS, PRICILLA STEPHENS, ALICE M. PARHAM, ROBERT PAUL YOUNG, DR. CARL ELLIOTT YEAGER, JR.

INFORMATION FOR UNLAWFULLY REMAINING IN A RESTAURANT AFTER HAVING BEEN REQUESTED TO LEAVE—Filed August 19, 1960

In the Name and by Authority of the State of Florida:

John C. Wynn, Assistant State Attorney of the Eleventh Judicial Circuit of Florida, in and for Dade County, prosecuting for the State of Florida, in the said County, under oath, information makes that James Russell Robinson, Joseph Price Perkins, Marvin Edison Robinson, Thomas Vawn Roland, James H. Laue, Thomas Walter Gaither, Barry M. Cohen, Angeline E. Butler, Henry Pringle, Bernard Lafayette, Oliver William St. Pee, Leon Everette Bailey, Dorothy R. Miller, Patricia Stephens, Pricilla Stephens, Alice M. Parham, Robert Paul Young, Dr. Carl Elliot Yeager, Jr. of the County of Dade and State of Florida, on the 17th day of August, in the year of our Lord, one thousand nine hundred and sixty, in the County and State aforesaid, did then and there unlawfully remain or [fol. 4] attempt to remain in a restaurant after being requested to depart therefrom in violation of Section 509:141

(3), Florida Statute, in that the above-named defendants at the aforesaid time and place did then enter the premises located at 5941 Northwest 7th Avenue, in the County and State aforesaid, said premises being then and there owned and operated by Shell City, Inc., a Florida Corporation, and which said premises were then and there being operated as a restaurant under the name Shell City Restaurant; that the above-named defendants did then and there seat themselves as guests at tables in the aforesaid restaurant; and that said above-named defendants did then and there unlawfully remain or attempt to remain in the aforesaid restaurant after said above-named defendants had been requested to depart therefrom by the manager, assistant manager, or other person in charge or in authority of the aforesaid restaurant, said manager, assistant manager, or other person in charge or in authority of the aforesaid restaurant being then and there of the opinion that if the above-named defendants were entertained or served it would be detrimental to the said restaurant, contrary to the form of the Statute in such cases made and provided, and against the peace and dignity of the State of Florida.

John C. Wynn, Assistant State Attorney, Eleventh Judicial Circuit of Florida, in and for Dade County.

State of Florida,
County of Dade:

Personally appeared before me, John C. Wynn, Assistant State Attorney of the Eleventh Judicial Circuit of Florida, [fol. 5] in and for Dade County, who, being first duly sworn, says that the allegations as set forth in the foregoing Information are based upon facts that have been sworn to as true, and which, if true, would constitute the offense therein charged.

John C. Wynn, Assistant State Attorney, Eleventh Judicial Circuit of Florida, in and for Dade County.

Sworn to and subscribed before me this 18th day of August, A. D. 1960.

J. F. McCracken, Clerk of the Criminal Court of Record, Dade County, Florida, By Jean Williams, Deputy Clerk.

[fol. 7]

IN THE CRIMINAL COURT OF DADE COUNTY

[Title omitted]

ARRAIGNMENT, PLEAS OF NOT GUILTY AND WAIVERS OF JURY TRIAL—August 22, 1960

The Defendants, James Russell Robinson, Joseph Price Perkins, Marvin Edison Robinson, Thomas Vawn Roland, James H. Lane, Thomas Walter Gither, Barry M. Cohen, Angeline E. Butler, Henry Pringle, Bernard Lafayette, Oliver William St. Pee, Leon Everette Bailey, Dorothy R. Miller, Patricia Stephens, Pricilla Stephens, Alice M. Parham, Robert Paul Young, and Dr. Carl Elliott Yeager, Jr., were arraigned in open Court by Aram P. Goshgarian, Assistant State Attorney, and each pleaded not guilty, waiving trial by jury.

[fol. 8]

IN THE CRIMINAL COURT OF DADE COUNTY

[Title omitted]

CLERK'S MINUTES OF TRIAL—August 26, 1960

Irwin J. Block and Aram P. Goshgarian, Assistant State Attorneys.

H. W. Dixon, Marvin Rossman, Tobias Simon and Robert J. Raymon, Counsel for the Defense.

Reported by Pama Kane.

The Court, upon the oral Motion of Irwin J. Block, Assistant State Attorney, ordered the Information amended

to change the names of the Defendants, James H. Lane and Thomas Walter Gither, wherever appearing therein to "James H. Laue and Thomas Walter Gaither".

All the witnesses were sworn and the Rule was invoked, at the request of Counsel for the Defense.

Sherian Rose Jeffery, Edward S. Hollander, George J. McKelvey, Warren C. Williams and John P. Suggs testified before the Court.

[fol. 9] Counsel for the Defense orally presented a Motion for a Directed Verdict, which Motion the Court denied.

The Court placed the Defendant, James Russell Robinson, on probation, without adjudication, and ordered him released into the custody of the Probation Officer for a period of one (1) year.

The Court placed the Defendant, Joseph Price Perkins, on probation, without adjudication, and ordered him released into the custody of the Probation Officer for period of one (1) year.

The Court placed the Defendant, Marvin Edison Robinson, on probation, without adjudication, and ordered him released into the custody of the Probation Officer for a period of one (1) year.

The Court placed the Defendant, Thomas Vawn Roland, on probation, without adjudication, and ordered him released into the custody of the Probation Officer for a period of one (1) year.

The Court placed the Defendant, James H. Laue, on probation, without adjudication, and ordered him released into the custody of the Probation Officer for a period of one (1) year.

[fol. 10] Order Releasing Cash Bond of Defendant, James H. Laue—

The Court placed the Defendant, Thomas Walter Gaither, on probation, without adjudication, and ordered him released into the custody of the Probation Officer for a period of one (1) year.

The Court placed the Defendant, Barry M. Cohen, on probation, without adjudication and ordered him released into the custody of the Probation Officer for a period of one (1) year.

Order Releasing Cash Bond of Defendant, Barry M. Cohen—

The Court placed the Defendant, Angeline E. Butler, on probation, without adjudication, and ordered her released into the custody of the Probation Officer for a period of one (1) year.

Order Releasing Cash Bond of Defendant, Angeline E. Butler—

[fol. 11] The Court placed the Defendant, Henry Pringle, on probation, without adjudication, and ordered him released into the custody of the Probation Officer for a period of one (1) year.

Order Releasing Cash Bond of Defendant, Henry Pringle—

The Court placed the Defendant, Bernard Lafayette, on probation, without adjudication, and ordered him released into the custody of the Probation Officer for a period of one (1) year.

The Court placed the Defendant, Oliver William St. Pee, on probation, without adjudication, and ordered him released into the custody of the Probation Officer for a period of one (1) year.

Order Releasing Cash Bond of Defendant, Oliver William St. Pee—

The Court placed the Defendant, Leon Everett Bailey, on probation, without adjudication, and ordered him released [fol. 12] into the custody of the Probation Officer for a period of one (1) year.

The Court placed the Defendant, Dorothy R. Miller, on probation, without adjudication, and ordered her released into the custody of the Probation Officer for a period of one (1) year.

Order Releasing Cash Bond of Defendant, Dorothy R. Miller—

The Court placed the Defendant, Patricia Stephens, on probation, without adjudication, and ordered her released into the custody of the Probation Officer for a period of one (1) year.

Order Releasing Cash Bond of Defendant, Patricia Stephens—

The Court placed the Defendant, Pricilla Stephens, on probation, without adjudication, and ordered her released into the custody of the Probation Officer for a period of one (1) year.

Order Releasing Cash Bond of Defendant, Pricilla Stephens—

[fol. 13] The Court placed the Defendant, Alice M. Parham, on probation, without adjudication, and ordered her released into the custody of the Probation Officer for a period of one (1) year.

Order Releasing Cash Bond of Defendant, Alice M. Parham—

The Court placed the Defendant, Robert Paul Young, on probation, without adjudication, and ordered him released into the custody of the Probation Officer for a period of one (1) year.

Order Releasing Cash Bond of Defendant, Robert Paul Young—

The Court placed the Defendant, Dr. Carl Elliott Yeager, Jr., on probation, without adjudication, and ordered him released into the custody of the Probation Officer for a period of one (1) year.

Order Releasing Cash Bond of Defendant, Dr. Carl Elliott Yeager, Jr.—

[fol. 14]

IN THE CRIMINAL COURT OF RECORD

IN AND FOR DADE COUNTY, FLORIDA

No. 60-5173-A

[Title omitted]

ORDER GRANTING PROBATION TO JAMES RUSSELL ROBINSON —August 26, 1960

It Appearing Unto the Court that the defendant, James Russell Robinson has been found guilty of the charge of Unlawfully Remaining in a Restaurant after having been Requested to Leave by the Court upon a trial without a jury and it appearing unto the Court upon a hearing of the matter that the defendant is not likely again to engage in a criminal course of conduct and that the ends of justice and the welfare of society do not require that the defendant shall presently suffer the penalty imposed by law, and the Court being fully advised in the premises, it is thereupon

Considered, Ordered, and Adjudged that an adjudication of guilt and the imposition of sentence be, and the same are hereby, stayed and withheld and the defendant, James Russell Robinson is hereby placed on probation in the custody of the Probation Officer of the Court for a term of one (1) year.

Done and Ordered in open Court at Miami, Dade County, Florida this the 26 day of August A.D., 1960.

George E. Schulz, Judge.

[fol. 15]

IN THE CRIMINAL COURT OF DADE COUNTY

CLERK'S RECITATION OF ENTRY OF ORDERS GRANTING PROBATION—August 26, 1960

And on August 26, 1960, the Court entered herein its Order Granting Probation, as to each of the Defendants, Joseph Price Perkins, Marvin Edison Robinson, Thomas Yawn Roland, James [illegible] Laue, Thomas Walter Gaither, Barry M. Cohen, Angeline E. Butler, Henry Pringle, Bernard Lafayette, Oliver William St. Pee, Leon Everette Bailey, Dorothy R. Miller, Patricia Stephens, Pricilla Stephens, Alice M. Parham, Robert Paul Young, and Dr. Carl Elliott Yeager, Jr., which said Orders Granting Probation were duly recorded by the Clerk of the Court in Criminal Court of Record Minute Book No. 25, on Pages 3, 4, 5, 6, 8, 9, 11, 13, 15, 16, 18, 19, 21, 23, 25, 27, and 29, respectively, and are in the same words and figures as the Order Granting Probation as to the Defendant, James Russell Robinson, hereinabove set forth, except for the name of the respective individual defendant and the letter following the case number, designating the docket page.

* * * * * *

(And on September 21, 1960, the Defendants filed herein their Notice of Appeal, which said Notice of Appeal was duly recorded by the Clerk of the Court in Criminal Court of Record Minute Book No. 26, on Page 339, and is in the words and figures following, to-wit:)

IN THE CRIMINAL COURT OF RECORD

IN AND FOR DADE COUNTY, FLORIDA

No. 60C 5173

[fol. 17]

IN THE CRIMINAL COURT OF RECORD

IN AND FOR DADE COUNTY, FLORIDA

No. 60C 5173

[Title omitted]

ASSIGNMENT OF ERRORS—Filed September 21, 1960

[fol. 18] The Defendants assign the following as errors to be relied upon in the appeal in the captioned cause.

1. The Court erred in finding the Defendants guilty and entering judgment against the Defendants for the reason that it affirmatively appears that Shell City, Inc., has requested the Defendants to leave its premises solely because of their color or associations with persons of color, and that the subsequent arrest of the Defendants and the trial of the Defendants pursuant to Florida Statutes 509.141(3) constituted state aid and assistance in support of private discrimination based solely upon color or associations with persons of color whereby the entry of said judgment violated the Defendants' rights to due process of law, their rights to equal protection of the laws, and their privileges and immunities, as guaranteed them by the Fourteenth Amendment to the Federal Constitution and further violated their privileges and immunities of federal citizenship as guaranteed by Article IV, Section 2, of the Federal Constitution.

Tobias Simon, Howard Dixon, Robert Ramer, Marvin Rosman, Attorneys for Defendants, c/o Florida Civil Liberties Union, 706 Ainsley Building, Miami, Florida.

[fol. 21]

IN THE CRIMINAL COURT OF RECORD
IN AND FOR DADE COUNTY, FLORIDA

No. 60C 5173

THE STATE OF FLORIDA, Plaintiff,

vs.

JAMES RUSSELL ROBINSON, JOSEPH PRICE PERKINS, MARVIN EDISON ROBINSON, THOMAS VAWN ROLAND, JAMES H. LANE, THOMAS WALTER GITHER, BARRY M. COHEN, ANGELINE E. BUTLER, HENRY PRINGLE, BERNARD LAFAYETTE, OLIVER WILLIAM ST. PEE, LEON EVERETT BAILEY, DOROTHY R. MILLER, PATRICIA STEPHENS, PRICILLA STEPHENS, ALICE M. PARHAM; ROBERT PAUL YOUNG, DR. CARL ELLIOTT YEAGER, JR., Defendants.

Dade County Court House, Miami, Florida, Friday, 9:30 a.m., August 26, 1960.

The above-entitled case came on for trial before the Hon. George E. Schulz, Judge.

Reporter's Transcript of Testimony

APPEARANCES:

Richard E. Gerstein, State Attorney, by Irwin J. Block, Assistant State Attorney, and Aram P. Goshgarian, Assistant State Attorney.

Tobias Simon, Esq., Howard W. Dixon, Esq., Robert Ramer, Esq., and Marvin Rosman, Esq., Attorneys for Defendants.

[fol. 23] The Court: We will invoke the rule.

[Whereupon, all witnesses were duly sworn and admonished by the Court and retired from the courtroom.]

Mr. Block: At this time the State wishes to amend the information as to defendant F to read Gaither instead of Gither, and as defendant E to read Laue instead of Lane.

The Court: Is there any objection on the part of the defendants?

Mr. Dixon: None.

The Court: The motion to amend the information is hereby granted.

Is the State ready to proceed?

Mr. Block: Yes.

The Court: If any of the defendants cannot hear the witnesses testify, if they will let the Court know, we will see that they are able to hear.

Thereupon: SHARON ROSE JEFFERY was called as a witness on behalf of the State and, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Block:

Q. Tell the Court your full name.

A. Sharon Rose Jeffery.

[fol. 24] Q. What is your home address?

A. 10045 Greenfield, Detroit, Michigan.

Q. What are you residing here in Miami?

A. The Sir John Hotel.

Q. What is that located? Is that in the downtown colored area of Miami?

Mr. Ramer: To which we object. The question is not relative to any of the issues presented here.

The Court: Sustained.

Q. When did you arrive in Miami?

A. August 13.

Q. Were you in Shell's City restaurant on Wednesday, August 17, of this year?

A. Yes, I was.

Q. Approximately what time did you arrive there?

A. Between four-fifteen and four-thirty.

Q. Sharon, while you were in the restaurant, did you observe a group of eighteen people—white and colored—that proceeded into the restaurant?

A. Proceeded?

Q. That were in the restaurant.

A. Yes.

Q. Were they there before you or were you there before they came in?

[fol. 25] A. Before me.

Q. Do you know those eighteen people?

A. Yes.

Q. Would you look around, please, and as you see them, point them out and name them for the Court?

A. Leon Bailey [indicating].

Mr. Block: Leon, would you raise your hand as your name is called.

The Witness: Bernard Lafayette, Tom Gaither, Marvin Robinson, Joe Perkins, Tom Roland, James Robinson, Robert Young, Alice Parham, Dr. Yeager.

Q. Do you know Dr. Yeager's first name?

A. No, I don't.

Q. Proceed.

A. Pricilla Stephens, Dorothy Miller, Jim Laue, Angeline Butler, Barry Cohen, Pricilla—Pat Stephens, Henry Pringle, and Oliver St. Pee.

Q. Were you there when the police arrived?

A. Yes.

Q. Are these the eighteen people who were placed under arrest by the police?

A. Yes.

Mr. Block: You may inquire.

Mr. Ramer: No questions.

[fol. 26] The Court: You are not to discuss your testimony with any of the other witnesses.

[Whereupon, the witness was excused.]

Thereupon: Edward S. Hollander was called as a witness on behalf of the State and, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Block:

Q. Were you sworn before, Mr. Hollander?

A. Yes.

Q. Will you state your name for the record?

A. Edward Sidney Hollander.

Q. What is your address?

A. 12501 Baltimore Road, Baltimore, Maryland.

Q. Where do you reside locally?

A. The Sir John Hotel.

Q. You were in Shell's City restaurant on Wednesday, August 17 of this year?

A. I was.

Q. Did you have occasion to observe eighteen people in a mixed group who were looking for service there that afternoon?

A. Yes.

Q. Do you see them here and if you do, would you name [fol. 27] them?

A. Jim Robinson, Tom Roland, Joe Perkins, Marvin Robinson, Leon Bailey, Carl Yeager, Dorothy Miller, Bernard Lafayette, Pricilla Stephens, Angeline Butler, Barry Cohen, Patricia Stephens, Henry Pringle, Oliver St. Pee—if that is eighteen.

Q. Do you know these two seated here [indicating]?

A. Yes.

Q. Would you name them?

A. Bob Young and Alice Parham.

Mr. Block: This witness and the prior witness have named and identified the defendants in this case.

Q. Were you there when these people were arrested?

A. I was there when some of them were let out of the restaurant and I was watching when some of them were taken away.

Q. Were the ones who were taken away, the group you just named?

A. Yes.

Mr. Block: You may inquire.

Cross examination.

By Mr. Ramer:

Q. Mr. Hollander, were you present when these people entered the premises at Shell's?

A. No.

Q. How long after they entered, if you know, did you [fol. 28] arrive on the scene?

A. Oh, five or ten minutes.

Q. How long did you stay and observe these people before they were led out?

A. Well, I didn't observe them. Sometimes I was in the vicinity of the restaurant. Sometimes I was walking around the store, sometimes outside of the store.

Q. Do you know how long the defendants were present in Shell's restaurant?

A. For about an hour and a half.

Q. Can you describe to the Court what their demeanor was during that hour and a half?

Mr. Block: To which the State objects. This goes beyond the direct examination, which was solely for identification.

The Court: Is there any argument on behalf of the defendants?

Mr. Ramer: No, Your Honor.

The Court: The objection is sustained.

Mr. Ramer: I have no further questions.

[Whereupon, the witness was excused.]

Thereupon: GEORGE J. MCKELVEY was called as a witness on behalf of the State and, having been duly sworn, was [fol. 29] examined and testified as follows:

Direct examination.

By Mr. Goshgarian:

Q. Will you please state your name and address?

A. George J. McKelvey, 460 Sabal Palm Road, Miami, Florida.

Q. Where are you employed?

A. Shell's City.

Q. How long have you been in Dade County, Florida?

A. Twenty-one years.

Q. How long have you been employed by Shell's City?

A. Twenty-one years.

Q. What are your specific duties there at Shell's City?

Mr. Simon: To which we object. This is not the proper way of proving an agency relationship.

The Court: The objection is overruled.

Q. What specific duties do you have there?
A. Vice president, general manager.
Q. Is Shell's City a Florida corporation?
A. Yes, sir.
Q. When was it incorporated?
A. I am not sure, sir.
Q. Are you a member of that corporation?
A. Yes, sir.
Q. What is your position?
[fol. 30] A. Vice president.
Q. How long have you held the position of vice president?
A. Ten years.
Q. Is it a corporation in good standing at the present time, sir?
A. Yes, sir.
Q. Were you so employed on the 17th day of August, 1960?
A. Yes, sir.
Q. What general duties did you have on that date?
A. Managing of the whole store.
Q. What time did you go to work on the 17th day of August, 1960?
A. Approximately 9:00 a.m.
Q. What time did you leave the premises?
A. Approximately 9:00 p.m.
Q. Did you have occasion to be in the store at approximately four-thirty to five o'clock on the 17th of August, 1960?
A. I was.
Q. Did you have occasion to be in the vicinity of the restaurant at that time?
A. I was.
Q. Describe this restaurant to His Honor, Judge Schulz.
A. The restaurant is located at the southeast corner of the main building. It is enclosed with glass.
[fol. 31] Q. Who runs this restaurant?
A. I do.
Q. Is it leased out to anybody—sublet out to anybody?
A. No, sir.

Q. It is run by Shell's City, Inc.; is that correct?

A. That is correct.

Q. Were you present between four-thirty and five o'clock on the 17th day of August, 1960?

A. I was.

Q. Did you have occasion to observe customers that went into the establishment on that date?

A. I did.

Q. Tell the Court what you observed.

A. I observed a group of colored and white people go into the restaurant.

Q. Approximately how many did you observe?

A. Nineteen.

Q. What time of the day was this?

A. Approximately five o'clock.

Q. What happened immediately after you observed them over in the restaurant?

A. I went in and sat down at a table with three other men and ordered a cup of coffee.

Q. Who were these men?

[fol. 32] A. One was Toby Haytock.

Q. What is his position in the store?

A. He is a grocery manager.

Q. Who else?

A. The other two were salesmen. I don't know their names.

Q. You ordered coffee; is that correct?

A. That's correct.

Q. Did you observe this group who had proceeded into the restaurant?

A. I did.

Q. Where did they seat themselves?

A. At tables, in the main part of the floor.

Q. How many tables did they occupy?

A. Five tables.

Q. How were they seated, do you remember, sir?

A. There were four tables of four and one table of three.

Q. Was this a mixed crowd?

A. Yes.

Q. Both colored and white?

A. Yes, sir.

Q. How long did you observe them?

A. About a half an hour.

Q. During the course of this half hour, did any of the members of this group come up and talk to you?

[fol. 33] A. Yes, sir.

Q. Would you point them out to the Court?

A. Right here [indicating].

The Court: Which one?

The Witness: The third one.

The Court: What is his name?

The Witness: Joseph Perkins.

Q. How long after you seated yourself did the defendant, Joseph Perkins, come up and talk to you?

A. Approximately thirty minutes.

Q. What did he say to you and what did you say to him?

A. He told me he had not been served and asked me when he was going to be served.

Q. What did you say to that?

A. I told him he was not going to be served.

Q. What did the defendant do after that?

A. He asked to talk to me further. I stated I had nothing further to discuss with him.

Q. What did he do after that, sir?

A. He thanked me and went back to the table he was sitting at.

Q. What did you do after that, if anything?

A. I went outside the restaurant and talked to Mr. Williams, who is also a vice president of the company, and went [fol. 34] to the office and called the police department.

Mr. Ramer: To which we object. There are two parties who called the police.

The Court: Are you the one who made the call?

The Witness: I was.

Q. Did you return to the restaurant after you made the call?

A. I did.

Q. How soon after you made the call did the police arrive?

A. About ten or twelve minutes.

Q. Approximately what time did they arrive, Mr. McKelvey?

A. Somewhere between—I don't know exactly. Fifteen, or a quarter of or sixteen.

Q. What was the name of the officer who arrived at the scene?

A. Sergeant Suggs.

Q. What did you do upon his arrival?

A. I went back to the restaurant and went to each individual table where these people were sitting.

Q. Why did you do that?

A. I wanted to state to them they were not going to be served and request them to leave.

Q. Were you advised to do that?

A. I was advised by Sergeant Suggs that I would have to [fol. 35] repeat that in his presence.

The Court: Were the defendants present during this conversation?

The Witness: No, sir.

The Court: The conversation of the witness with Sergeant Suggs will be stricken.

Q. What did you do, exactly?

A. I went to each individual table and told them we were not going to serve them and we requested that they leave.

Q. Who was with you when you said that?

A. Sergeant Suggs was directly behind me and Mr. Gordon Williams.

Q. Tell the Court exactly what procedure you followed. Did you go to the first table?

A. I did.

Q. You told the individuals at that table separately that they were not going to be served?

A. I told them as a group of four.

Q. What did you do after that?

A. I went to the second table and repeated it; the third table, the fourth table and the fifth table right around the room.

Q. Was there any conversation with them when you told them you would not serve them?

[fol. 36] A. One of them attempted to enter into a conversation; yes, sir.

Q. Do you see him in court?

A. Right here [indicating].

Mr. Block: For the record, the witness is pointing to James Russell Robinson.

Q. What did he say to you and what did you say to him?

A. He asked me why and I told him I had nothing further to state.

Q. Why did you refuse to serve these defendants?

A. Because I feel, definitely, it is very detrimental to our business to do so.

Q. What do you mean "detrimental"?

A. Detrimental because it would mean a loss of business to us to serve mixed groups.

Q. Do you base that on any previous activities or instances that you have had in your restaurant?

A. I do.

Q. Will you tell the Court when and where these incidents occurred?

A. Approximately a month prior, we had a group of four colored people come in our restaurant and we had a tremendous amount of statements from our customers that they would quit trading at our store.

[fol. 37] Mr. Ramer: I object to statements by unidentified persons where we have no way of checking.

Mr. Goshgarian: The statute requires that an owner or manager or employee of a restaurant has a right, if he was of the opinion that serving these people would be a detriment to his business, to not serve them. I asked if he felt it was and he stated it was. Then, I have to ask what he has based his opinion upon.

The Court: Do not relate any conversation. I think it would be permissible to tell what his opinion is based upon.

The objection is overruled.

Go ahead.

The Witness: The day before this incident, we had a mixed group of four come into the restaurant. I had a number of our employees who were very hostile about it, as well as our customers. They definitely did not want it.

Q. You base your opinion on this; is that correct?

A. That is correct.

Q. Were you present when the officers arrested the eighteen defendants?

A. I was.

Q. Are you able to identify the defendants other than those you have already identified, sir?

A. Yes, sir.

[fol. 38] Q. Would you look around the court and point to the persons you observed in your store on the 17th of August, 1960?

A. The groups on both sides of the room.

Q. Would you step down from the witness stand and point to each and every one?

Mr. Ramer: We will concede he can identify them.

The Court: You stipulate that he can identify these defendants?

Mr. Ramer: Yes.

The Court: Let the stipulation be reflected in the record.

Q. Is your store located in Dade County, Florida?

A. Yes.

Q. All this happened in Dade County, Florida?

A. It did.

Q. Reverting back to the time you were seated at the counter having coffee, were you approached by any customer in the store at that time, sir?

A. I was.

Q. How far away from the defendants were you seated, sir, when this customer approached you?

A. One table away.

Q. Did the customer have conversation with you at that time?

[fol. 39] A. That is correct.

Q. Please tell the Court what this customer told you.

Mr. Ramer: To which we object. It would be hearsay.

Mr. Goshgarian: It is part of the res gestae. We are prepared to show that this customer made a remark that would show there was a hostile situation existing at that time and that it was a detriment—

The Court: I think there is a question of whether or not the defendants could have heard the remark. I am going to sustain the objection.

Q. Where is Shell's City, Inc., located?

A. Northwest Seventh Avenue and 58th Street.

Q. In Dade County, Florida, sir?
A. Correct.

Mr. Goshgarian: I have no further questions.
The Court: You may cross examine.

Cross examination.

By Mr. Ramer:

Q. Sir, when, for the first time, did you form the opinion that these people seated in your restaurant were detrimental to your business?
A. A year ago.
Q. You testified that there were four people, consisting of a mixed group, who were in your store on a previous day; [fol. 40] is that correct?
A. That's correct.
Q. You made no protest to the police on that occasion?
A. That is correct.
Q. You did not request those four people to leave?
A. That is correct.
Q. You did not tell those four people they would not be served?
A. That is correct.
Q. On, August 17, you sat in the same restaurant with this large group of people and you did nothing for approximately an hour; is that correct?
A. No, sir.
Q. What did you do toward getting these people off of your premises?
A. Approximately a half an hour after they had been in the restaurant, when one boy approached me and I told him at that time they would not be served.
Q. That was the extent of your conversation with him the first time?
A. That is correct.
Q. Then, they returned to their seats and there was no further conversation between you for approximately a half an hour?
[fol. 41] A. Fifteen or twenty minutes, I would say.
Q. In that interval, you did absolutely nothing to overcome this detriment to your business?

A. That is correct.

Q. You still hold the opinion that this was detrimental to your business, do you not?

A. Yes, sir.

Q. The basis of that opinion, of course, is the fact that certain of these prospective customers are Negroes; is that not correct?

Mr. Goshgarian: I object to that. The witness can still tell what his opinion is, on what it is based. He does not have to assent to remarks of counsel.

The Court: Answer the question. The objection is overruled.

The Witness: Would you repeat the question?

The Court: You can answer yes or no.

Will you read the question?

[The question referred to was read by the reporter.]

A. Yes.

Q. In the case of the white prospective customers, the basis for your believing them to be detrimental to your business is the fact that they were in company with the Negroes; is that not correct, sir?

[fol. 42] A. Yes, sir.

Q. Sir, at any time, did any of these defendants refuse to leave your premises upon request?

A. Yes, sir.

Q. When was that?

A. When I went around to the tables.

The Court: Speak a little louder, please.

The Witness: When I went around to the tables to inform them.

Q. How long a period after they had been on the premises was this?

A. Forty-five minutes, approximately.

Q. Is it not a fact that during the course of your first conversation with Mr. Perkins you told Mr. Perkins that the waitresses were busy right then?

A. No, sir.

Q. You made no such statement at all?

A. No, sir.

Q. Is it possible that these people came on your premises, as far as you know, at four-fifteen?

A. I am not exactly certain of the time, sir.

Q. Did you see Mr. Perkins proceed to the cashier before he came to speak to you?

A. I did.

[fol. 43] Q. Do you know whether or not the cashier directed him to you?

A. I can only assume she did.

The Court: If you do not know, say you do not know.

The Witness: I don't know.

Q. During the course of time that these people were seated in your restaurant, did you notice them having any brief conversation with the waitresses or other employees?

A. I did not observe that.

Q. Is it possible that such might have occurred, even though you were seated there and you would not see it?

A. I don't know.

Q. During the time you were seated in the restaurant, were there not other patrons frequenting the restaurant?

A. Yes, sir.

Q. These patrons were served?

A. Yes, sir.

Q. They ate their food?

A. Yes, sir.

Q. They paid for it?

A. Yes, sir.

Q. Did any special crowd gather during the period of time the defendants were in your restaurant?

A. Yes, sir.

[fol. 44] Q. Where did this crowd gather?

A. Directly outside the restaurant and in the restaurant.

Q. When was this?

A. All during the course of this incident.

Q. Can you estimate for us the number of people crowded around there?

A. I would say a hundred.

Q. Was this a mixed crowd? Were there Negroes and whites there?

A. I do not know.

Q. Is it not a fact that Shell's City does not have the official opinion that it is detrimental to their business for Negroes to purchase products in other parts of their store?

A. That is correct.

Q. So that Negroes are permitted in the premises?

A. Yes, sir.

Q. They are permitted to do business with Shell's City?

A. Yes, sir.

Q. Sir, I noted that you were quoted in the newspaper—

Mr. Goshgarian: I object to any quotation in the newspaper.

Mr. Ramer: I submit, Your Honor, that I am entitled to complete the question.

The Court: Go ahead.

[fol. 45] Do not answer the question.

Q. [Continuing] "I have been asked to drop charges. I do not see how we can at this point."

Are you under any coercion to testify here today?

The Court: I am going to sustain the first part of the objection but I will let him answer the second part.

Mr. Goshgarian: I am going to object to the second part. The State of Florida brought the action and not the witness. He would not be in any position to drop the action.

The Court: I have sustained the objection.

You can answer whether you were coerced. Were you, sir?

A. No, sir.

Q. Did anyone tell you that it would be impossible for you to drop these charges?

A. No, sir.

Q. Did you discuss the testimony you would give here today with anyone?

A. I have.

Q. Do you have any signs in your restaurant indicating that Negroes are not welcome on the premises and will not be served?

Mr. Goshgarian: To which the State objects. It is irrelevant and immaterial.

The Court: The objection is sustained.

[fol. 46] Q. Would you relate for us, again, please, the extent of your conversation with Mr. Perkins, when he came up to speak to you?

A. He excused himself and asked if I could answer a question and I said yes.

The Court: Speak louder.

The Witness: He said they had been sitting some time and had not been served and could I tell him when they were going to be served and I stated, "You are not going to be served."

He said, "I would like to discuss it with you," and I said, "I have nothing further to say."

Q. That was the extent of the conversation?

A. Correct.

Q. You testified that a crowd gathered during their stay in the restaurant. Was that crowd composed of employees of Shell's?

A. Partially.

Q. Did they come there at your request?

A. No, sir.

Q. Is it not true that the crowd primarily developed at the time the officer came upon the scene?

A. No, sir.

Q. It did not increase in any extent when the officer came upon the scene?

[fol. 47] A. I do not know, sir.

Mr. Ramer: No further questions.

[Whereupon, the witness was excused.]

Thereupon: WARREN C. WILLIAMS was called as a witness on behalf of the State and, after having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Goshgarian:

Q. Will you please state your full name and your address?

A. My name is Warren C. Williams. I reside at 465 Northeast 62nd Street.

Q. How long have you resided in Dade County, Florida?

A. Thirty-five years.

Q. Where are you employed?

A. I am employed by Shell's City, Inc., these past twenty-one years.

Q. What specific duties do you have?

A. I am vice president and auditor.

Q. How long have you been so employed?

A. I have been with them twenty-one years. I have been vice president, perhaps, fifteen years.

Q. Were you so employed on August 17, 1960?

A. Yes, sir.

[fol. 48] Q. Did you have occasion to go into the restaurant on that date?

A. Yes, sir.

Q. Approximately what time did you arrive there?

A. It was after five. About five-thirty, I would say, the best I could place it.

Q. Why did you go to the restaurant?

A. I received a call from my home, from one of my assistants, that there were five—

Q. Do not tell us the conversation.

Based on the call, you went to the restaurant; is that correct?

A. Yes, sir.

Q. What time did you arrive there?

A. In the neighborhood of five-thirty?

Q. What did you do immediately upon arriving at the restaurant?

A. I went into the restaurant and observed these colored people sitting there.

Q. Where were they seated, sir?

A. Well, there was one table of four sitting fairly close to the door. There was another table to the left of them, as well as I remember, at which there were four seated, and there was another table here [indicating] with four, [fol. 49] and a table more in the center of the restaurant at which this gentleman here was seated [indicating].

The Court: The gentleman on the end?

The Witness: He was seated in about the center of the restaurant and, then, to the west was another table at which three were seated.

Q. Were you present, Mr. Williams, when the officers arrived?

A. Yes, sir.

Q. Were you present when Sergeant Suggs arrived?

A. Yes, sir.

Q. Approximately what time did he arrive?

A. Well, it was some ten or fifteen minutes after I got there.

Q. Did you have occasion to accompany George McKelvey and Sergeant Suggs to each and every table?

A. Yes, sir.

Q. Please tell the Court just what happened at these tables.

A. We went to the first table—

Q. Who is "we"?

A. Mr. McKelvey and Sergeant Suggs and myself.

Q. In what order did you proceed?

A. Mr. McKelvey was in front, I believe. I know he was [fol. 50] in front at that time. Sergeant Suggs was next and I stood next to the Sergeant.

Q. Did you have occasion to hear the conversation between George McKelvey and the people at the tables?

A. Yes, sir.

Q. Tell the Court what you heard.

A. Mr. McKelvey told them, approximately, that we were

not going to serve them, and that we wished they would leave the premises.

Q. To whom did he tell this?

A. Well, he addressed it to the table in general but there seemed to be a leader at each table who sort of—

Mr. Ramer: Objection.

The Court: Sustained.

Q. Did he go to each table?

A. Yes.

Mr. Simon: To which we object. He has already answered that question.

The Court: I am going to ask that only one of you enter objections.

Mr. Simon: Yes. I will withdraw that objection.

The Court: Go ahead.

Q. Did you follow Sergeant Suggs and Mr. McKelvey to each and every table?

[fol. 51] A. Yes, sir.

Q. Was the same conversation repeated at each and every table?

A. The same conversation; yes, sir.

Q. Did the people who were seated at these tables leave when they were asked to do so?

A. No, sir.

Q. Were you there when they were placed under arrest?

A. Yes, sir.

Q. Did all this happen in Dade County, Florida?

A. Yes, sir.

Mr. Goshgarian: No further questions.

Cross examination.

By Mr. Simon:

Q. Mr. Williams, did you discuss with Mr. McKelvey the reason for refusing to serve these people?

A. No, sir.

Q. Do you know why these people were refused service at the restaurant?

A. Well, basically, it is the policy of Shell's City not to serve colored people in our restaurant.

Q. Why?

A. That is based upon the customs, the habits and what we believe to be the desire of the majority of the white [fol. 52] people of this county.

Q. Do you have any reason to believe that the service of Negroes in this restaurant would be detrimental to your business?

A. I think so, yes.

Q. Do you believe that your refusal to serve Negroes would be detrimental to your business?

A. No, sir.

Q. Is it not a fact that you have already seen evidence that the refusal to serve Negroes is detrimental to your business?

A. I have seen no evidence of it, no, sir.

Q. Do you feel you are pursuing a course which has no regard whatsoever for the rights of these people?

Mr. Goshgarian: I am going to object to that.

The Court: The objection is sustained. He is asking for a conclusion.

Q. You have several departments in your store, do you not?

A. Yes. Nineteen, I believe. Maybe twenty.

Q. Negroes are invited to participate and make purchases in eighteen of these departments?

A. Yes, sir.

Q. Can you distinguish between your feeling that it is not detrimental to have them served in eighteen departments and it is detrimental to have them served in the nineteenth department, namely, the lunch counter?

[fol. 53] A. Well, it goes back to what is the custom, that is, the tradition of what is basically observed in Dade County would be the bottom of it. We have—

Q. The custom that Negroes are not allowed to eat in restaurants where white people are?

The Court: I think you are getting away from the relevancy of this matter before the Court.

Mr. Simon: I will desist if the Court says so but, as Mr. Goshgarian so ably pointed out, the basis for his opinion that it is detrimental is a legal conclusion, which is a pertinent factor in this case. I think we are entitled to find out how he arrived at it.

The Court: I think he has answered the question.

The Witness: I am not familiar with the customer—

The Court: I do not think he is the manager.

Mr. Simon: He said he was a vice president.

The Court: Are you part of management?

The Witness: Yes.

The Court: Go ahead.

Q. Would you tell me what this custom is, that you are making reference to, that would prevent you from serving Negroes at your lunch counter?

A. I believe I already answered that, that it is the customs and traditions and practice in this county—not only [fol. 54] in this county but in this part of the state and elsewhere, not to serve whites and colored people seated in the same restaurant. That's my answer.

Q. Was that the sole reason, the sole basis, for your feeling that this was detrimental to your business?

A. Well, that is the foundation of it, yes, but we feel that at this time if we went into a thing of trying to break that barrier, we might have racial trouble, which we don't want. We have lots of good friends among colored people and will have when this case is over.

Q. Are you familiar with the fact that the Woolworth Stores in this community have eliminated this practice?

Mr. Goshgarian: To which the State objects. It is irrelevant and immaterial.

The Court: The objection is sustained.

Q. Was there any other reason you had for refusing to serve these people, other than the fact that they were Negroes or that the white persons among them were associated with the Negroes?

Mr. Goshgarian: Objection. That is not his testimony.

The Court: I do not believe I heard that, either. I will sustain the objection.

Mr. Simon: If Your Honor please, I will rephrase the question.

[fol. 55] Q. Why did you refuse to serve these people?

Mr. Goshgarian: I am going to object to that as being repetitious. He has answered the question twice already.

Mr. Simon: I understood he did and that he said—

The Court: I think he answered the question and, as I recall, he was not the gentleman who refused to serve them. He was merely present at the time, as I understand it.

I will sustain the objection.

Q. Do you know if Shell's City has a policy of refusing to serve Negroes in their restaurant?

Mr. Goshgarian: Objection. It is repetitious.

The Court: The objection is sustained.

Mr. Simon: I have no further questions.

[Whereupon, the witness was excused.]

Thereupon: JOHN P. SUGGS was called as a witness on behalf of the State and, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Block:

Q. Would you give the Court your full name?

A. John P. Suggs.

Q. With what department are you connected?

A. The Miami Police Department, Radio Patrol.

[fol. 56] Q. How long have you been in the Miami Police Department?

A. Twenty-one years.

Q. Your rank is that of sergeant?

A. Yes, sir.

Q. In what zone do you ride as sergeant?

A. Usually north of the river.

Q. Does that include the area in which Shell's City is located?

A. It does.

Q. Were you on duty in the late afternoon of August 17 of this year?

A. Yes, sir, I was.

Q. Did you receive a message to proceed, while you were on duty, to Shell's City?

A. I did.

Q. Did you go there?

A. I did.

Q. Were you riding alone or was there someone with you?

A. I was by myself.

Q. Were you in the performance of your duties at that time?

A. Yes, I was.

Q. Approximately what time did you arrive at Shell's City?

A. I arrived at approximately five-forty-five.

Q. Upon your arrival, approximately what part of Shell's [fol. 57] did you go into, Sergeant?

A. The east entrance of Shell's City.

Q. Did you then go into the restaurant?

A. Yes, sir.

Q. What did you observe in the restaurant?

A. Let me correct that. I went to the area of the restaurant, which is a glass enclosure, and at that time I met Mr. George McKelvey and Mr. Warren Williams.

Q. Then, what did you do?

A. They informed me of people that were there in the restaurant and they said they wanted them to leave.

Mr. Simon: I object to conversations with other people.

The Court: Was this in the presence of the defendants?

The Witness: No, sir.

The Court: The objection is sustained.

Q. Did you, in the company of Mr. George McKelvey, do anything in the restaurant?

A. Yes, sir, we did.

Q. Did you observe what Mr. McKelvey did in your presence and in the presence of the defendants?

A. Yes, sir.

Q. What did he do?

A. Mr. George McKelvey, myself and Mr. Williams went from one table to another of people that were sitting there [fol. 58] and Mr. McKelvey informed them he did not wish to serve them and wished them to leave.

Q. Did he address his remarks to a single particular individual or to the table and the parties seated there in general?

A. To the table. It is the small table.

Q. Will you recall as best you can the words Mr. McKelvey used?

A. To the best of my knowledge, he told them he did not wish to serve them.

Q. "Them"—plural?

A. Yes.

Q. What did he say as to that?

A. One or two of them he contacted raised a question of why and he said he had no further statement to make to them, and then we went from one table to the other until all these people were informed to leave and, after he informed them to leave, I advised them to leave myself.

Q. What did you do then?

A. After we had made the rounds of the tables, I went back to the first table we had contacted and asked them for identification.

Q. Prior to that, did you yourself ask each individual to leave?

[fol. 59] A. Not individual, but at the table group.

Q. Tell the Court what you told each table group.

A. After Mr. McKelvey informed them he would not serve them and they did not leave, I advised them to leave myself.

Q. Did you advise each of the table groups to leave?

A. Yes, sir.

Q. How long did you wait after doing that before taking your next action?

A. I arrived in there approximately at five-forty-five and I made a telephone call to my superior officer and proceeded to inform these people, with Mr. McKelvey, to leave and I took them into custody at five-fifteen—six-ten, rather.

Q. Approximately twenty minutes later?

A. About twenty minutes.

Q. What did you advise them upon taking them into custody?

A. After I took their names, which I wrote down—I made a list of identification—I asked for assistance from the superior officer and there was another police officer who came and I told him to take them into custody and to take them to the county jail.

Q. Did you advise them they were under arrest?

A. Not directly. I told him to place these people in custody.

Q. Were you involved in an incident at Shell's City concerning a mixed group some months back?

[fol. 60] A. Yes, sir.

Mr. Simon: Objection.

The Court: The objection is sustained.

Will you look around the courtroom and point out each of the people you placed under arrest?

Mr. Simon: I believe we already stipulated—

The Court: Do you stipulate that the officer can identify the defendants?

Mr. Simon: Yes.

The Court: Let the record so reflect.

Mr. Block: You may inquire.

Cross examination.

By Mr. Ramer:

Q. Officer Suggs, did you have any difficulty in entering the restaurant when you arrived on the scene?

A. No, sir.

Q. Did you have to make your way through a large number of people congregated at the entrance?

A. There was a small group there but no difficulty.

Q. At the time you came into the restaurant, were there other people besides the defendants seated at the tables?

A. Yes, sir.

Q. Eating their food?

A. Yes, sir.

[fol. 61] Q. Was there any other trouble in Shell's City upon your arrival of any kind that you could see, other than the problem that is involved here?

A. Not to my knowledge.

Q. When you instructed these defendants to leave, what was their demeanor at that time?

A. Well, in most instances, all they said was "Thank you."

In one or two instances, they raised a question, "Well, why?"

Q. Did any of them say, "No, we are not going to leave"?

A. They did not.

Q. I believe you made the last request; is that not correct?

A. As Mr. McKelvey informed them to leave, I advised each table, "You should leave."

Q. How much time elapsed between the time you told them to leave and they were all in custody?

A. Approximately twenty-five minutes.

Q. During that period of time, there was no rumpus or fuss or any loud noises or fighting or argument?

A. Well, as I first entered the restaurant or observed the restaurant from the glass enclosure, I could see some people at the counter discussing something with them. I could not hear what was going on.

Mr. Ramer: No further questions.

[fol. 62] [Whereupon, the witness was excused.]

Mr. Block: The State rests, your Honor.

MOTION FOR DIRECTED VERDICT AND DENIAL THEREOF

Mr. Simon: Your Honor, at this time, the defendants will move for a judgment of acquittal. I would like to briefly state our reasons.

[Argument of counsel.]

The Court: Let the record reflect that the motion for directed verdict of not guilty is hereby denied.

Mr. Simon: Your Honor, there will be no testimony for the defendants. The defense rests.

The Court: Is there any further summation from either side?

Mr. Simon: None from the defendants.
Mr. Block: None from the State.

STATEMENT BY COURT

The Court: The Court has studied this particular law, the Florida Statute known as 509.141, and I find nothing in this law that has anything to do with color. I cannot find anywhere that it is discriminatory. It appears to the Court that this law is as applicable in Liberty City or Bunche Park restaurants as it is in Miami Shores.

The legislature of the State has seen fit to pass this law which has left to the discretion of hotels, motels, apartments and restaurant operators whether or not a person is detrimental to their business and whether or not they want [fol. 62a] to serve him irrespective of his color. They may refuse to serve or entertain such persons and be within the laws.

I have known certain restaurants that require certain attire when a patron goes in, such as a jacket or coat. As a matter of fact, I have been refused to be served in some restaurants because I was not attired in a manner commensurate with what they required.

I have heard the testimony adduced here by the State this morning. There is no question that they established a prima facie case beyond all reasonable doubt, based on the wording of the statute, and from the testimony, as adduced here at the trial, it appears conclusively that you young folks refused to leave and unlawfully remained in this restaurant known as Shell's City after you were requested to leave.

As to the sentence the Court intends to impose, we have a new statute regarding certain types of sentencing and I think it would be applicable in your case.

I am going to read this law because I think it is a law that an organization such s yours might heartiiy approve.

I am reading from Chapter 948 of the Florida Statutes:

> "If it appears to the Court upon a hearing of the matter that the defendant is not likely again to engage in a criminal course of conduct and that the ends of justice and the welfare of society do not require that

[fol. 63] the defendant shall presently suffer the penalty imposed by law, the Court, in its discretion may, without adjudging the defendant to be guilty, thereupon stay and withhold the adjudication of guilty and the imposition of sentence upon such defendant, and shall place him upon probation."

That is what I intend to do with you young folks. I am going to set that probationary status for a period of one year.

I think the courts are always open to protect those people and persons who engage in what we consider legitimate activities but I think the courts are just as prompt to prosecute those who do otherwise.

I urge you to accept this decision, at least for the time being.

If the Court is erroneous, I notice you have a bank of attorneys who are very capable and who can set the wheels in motion.

I do not think it is within your province to act, as citizens, in accordance with what you think the law should be.

Let the courts decide the legal issues.

Are there any motions at this time?

Mr. Simon: No, sir.

[Whereupon, the trial was concluded.]

[fol. 65] Certificate of the Clerk of the Court (omitted in printing).

[fol. 66]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

Case No. 5041

(Criminal Appeal)

JAMES RUSSELL ROBINSON, et al., Appellants,

vs.

THE STATE OF FLORIDA, Appellee.

JUDGMENT—January 27, 1961

This cause coming on to be heard on oral argument after notice and the Court having read the briefs, heard oral argument and being fully advised in the premises, is of the opinion that Section 509.141 of the Florida Statutes is a valid exercise of the sovereignty of the State of Florida and that its application to the Appellants in this case does not deprive them of any of their rights under the constitutions of the United States or of the State of Florida. There being no other error urged on appeal the Court is of the opinion that the judgment and sentence in this cause should be and they hereby are affirmed.

It is so ordered this 27 day of January, 1961.

Robert H. Anderson, Circuit Judge.

[fol. 67]

IN THE CIRCUIT COURT OF DADE COUNTY

PETITION FOR REHEARING

The Appellants, by their undersigned counsel, respectfully petition this Honorable Court for a Re-Hearing in the within cause, and in support thereof state that the court, in its decision and opinion overlooked the fact that the case of Shelley vs. Kramer, 334 U.S. 1, requires that a state not be a party to a discriminatory action against an individual when said discriminatory action is based upon color or association with persons of color, and that the failure to apply the decision in that case to the facts in the case at bar constitutes a denial of due process of law, equal protection of laws, and privileges and immunities guaranteed to all citizens of the United States to the Appellants.

[fol. 68]

IN THE CIRCUIT COURT OF DADE COUNTY

ORDER DENYING REHEARING—February 22, 1961

This Cause having come on to be heard before me upon the Appellants' Petition for Re-Hearing, and the Court being fully advised in the premises, it is, upon consideration,

ORDERED that the Appellants' Petition for Re-Hearing be and the same is hereby denied.

Done and Ordered in Chambers at Miami, Dade County, Florida, this 22 day of February, 1961.

Robert H. Anderson, Circuit Judge.

[fol. 69]

IN THE DISTRICT COURT OF APPEAL OF FLORIDA

THIRD DISTRICT

January Term, A.D. 1961

Tuesday, April 18, 1961

Case No. 61-179

JAMES RUSSELL ROBINSON, et al., Petitioners,

vs.

THE STATE OF FLORIDA, Respondent.

ORDER TRANSFERRING CASE TO SUPREME COURT OF FLORIDA—April 18, 1961

This cause having come on before the court on respondent's motion to dismiss and the court having considered said motion as a motion to transfer, it is ordered that the petition for Writ of Certiorari and all papers filed prior to April 25, 1961, shall on that date be transferred to the Supreme Court of Florida as the proper court having jurisdiction in this cause.

[fol. 70]

IN THE SUPREME COURT OF FLORIDA

July Term, A. D. 1961

Case No. 40,039

JAMES RUSSELL ROBINSON, et al., Petitioners,

vs.

THE STATE OF FLORIDA, Respondent.

OPINION—Filed July 14, 1961

By petition for certiorari we are requested to review a decision of a circuit court which sat as an appellate court to review an appeal from a conviction of a misdemeanor in a criminal court of record.

The problem which challenges our attention involves a number of jurisdictional complications which must be resolved.

Robinson and others were found guilty of a misdemeanor in the Criminal Court of Record of Dade County. Each moved for a directed verdict without specifying the grounds thereof. The motion was denied and the petitioners were placed on probation under Chapter 948, Florida Statutes.

In denying the motion for a directed verdict at the conclusion of the evidence, the trial judge stated:

> "The Court has studied this particular law, the Florida Statute known as 509.141, and I find nothing in this law that has anything to do with color. I cannot find anywhere that it is discriminatory. It appears to the Court that this law is as applicable in Liberty City or Bunche Park restaurants as it is in Miami Shores.
>
> [fol. 71] "The legislature of the State has seen fit to pass this law which has left to the discretion of hotels, motels, apartments and restaurant operators whether or not a person is detrimental to their business and whether or not they want to serve him irrespective of his color. They may refuse to serve or entertain such persons and be within the laws."

They thereupon appealed to the Circuit Court of Dade County seeking review of the misdemeanor conviction. Article V, Section 6, Florida Constitution. The record reveals that the petitioners were charged and found guilty of a violation of Section 509.141(3), Florida Statutes, which makes it a misdemeanor to refuse to leave a restaurant after being requested so to do. By their appeal to the Circuit Court they contended that the application of the statute approved by the trial court amounted to State action violative of Federal rights to due process and equal protection of the law. Our examination of the record does not reflect that these contentions were raised in the trial court. The matter was considered by the circuit judge acting in his appellate capacity. He entered a judgment stating that he was "of the opinion that Section 509.141 of the Florida Statutes is a valid exercise of the sovereignty of

the State of Florida and that its application to the appellants in this case does not deprive them of any of their rights under the Constitutions of the United States or of the State of Florida." The circuit judge thereupon affirmed the judgment of the trial court.

[fol. 72] By petition for a writ of certiorari filed in the District Court of Appeal, Third District, Robinson, et al., sought review of the appellate decision of the circuit judge. The respondent, State of Florida, filed a motion to dismiss the petition in the District Court of Appeal. That court treated the motion to dismiss as a motion to transfer the cause to the Supreme Court, and thereupon entered an order transferring the cause to this Court. All of the papers in the cause have been lodged here. We are now confronted by another motion of respondent, State of Florida, requesting us to dismiss the petition for certiorari. The matter has come on for hearing upon this motion which ordinarily would be disposed of without opinion. The complexities of the jurisdictional problems presented, however, appear to justify our discussion thereof for the future guidance of the Bar and other courts.

If a judgment or decree of a trial court passes directly upon the validity of a statute or construes a controlling provision of the State or Federal Constitutions review by appeal should be sought directly in this Court. Article V, Section 4, Florida Constitution; State v. Bruno, Fla., 104 So. 2d 588, 107 So. 2d 9; Boyd v. County of Dade, Fla., 123 So. 2d 323. The sum of these prior decisions simply is that when a trial court, by its final judgment or decree, passes directly on the validity of a statute or construes a controlling provision of the Constitution, then in the interest of a prompt and final disposition of these important questions, the appeal comes directly to this Court without the necessity of any intermediary consideration by any other appellate court. This is so even in the case of a misdemeanor conviction which otherwise would be considered by circuit courts. Article V, Section 6, Florida [fol. 73] Constitution; State v. Bruno, supra.

In view of these considerations, a circuit court *as an appellate court* reviewing a judgment of a criminal court of record, *is without jurisdiction to consider an appeal which*

passes directly on the validity of a statute or construes a controlling provision of the Constitution. This is so because appellate jurisdiction to dispose of such problems is expressly vested in the Supreme Court.

By the same token this Court no longer has extensive power to issue so-called "common law writs of certiorari" to review judgments of lower courts. This power is now vested in District Courts of Appeal and Circuit Courts, by Article V. Sections 5 and 6, Florida Constitution. In situations in which review of a judgment or decree of a lower court is not otherwise provided for, the District Courts of Appeal are endowed with powers of review limited to a determination of whether the judgment constitutes a deviation from the essential requirement of the law. In a general way, this is the type of so-called common law certiorari power exercised by this Court prior to the effective date of amended Article V, on July 1, 1957.

We do not here intend to convey any impression that the Constitution endows the courts of appeal with the power of passing upon the correctness of judgments or decrees which determine the validity of a statute or construe a controlling provision of the State or Federal Constitutions. Our holding simply is that a judgment of a circuit court properly sitting in the exercise of its appellate jurisdiction is subject to review by petition for certiorari, not here, but in the appropriate District Court of Appeal.

[fol. 74] Reverting now to the matter before us, it is clear that if the trial judge passed upon the validity of the statute the initial appeal should have been brought directly to this Court instead of to the circuit court. The record from which we have quoted above indicates that the trial judge did consider and passed upon the validity of Section 509.141(3), Florida Statutes. The Circuit Court of Dade County had no jurisdiction to review this judgment. Consequently, the order of the circuit court, passing on the subject statute, was without force and effect.

In the instant situation, as pointed out above, we are not authorized to review directly the decisions of a circuit court sitting as an appellate court. As an incident to the disposition of the matter, however, we have pointed out the constitutional impediments similarly applicable to the ap-

pellate jurisdiction of circuit courts in reviewing judgments of other trial courts which pass upon the validity of statutes. Under our constitutional system a district court of appeal is the only court which is authorized to issue a so-called common law writ of certiorari in this instance. In so doing, that court may then properly consider the proposition that the circuit court, in the exercise of its appellate jurisdiction, in the instant case exceeded its constitutional power and, therefore, deviated from the essential requirements of the law. Any judgment rendered by the court of appeal may then be tendered to us for review under those provisions of Article V, Section 4, Florida Constitution, which authorizes us to review decisions of courts of appeal.

Following the pattern established by the district court of appeal respondent's motion to dismiss the petition is treated as a motion to transfer. All papers are hereby re-
[fol. 75] transferred to the District Court of Appeal, Third District and shall be forwarded to that court immediately upon the expiration of five days of the date of this order for further consideration and ultimate disposition in accord with the provisions hereof.

It is so ordered.

[fol. 76]

IN THE DISTRICT COURT OF APPEAL OF FLORIDA

THIRD DISTRICT

July Term, A.D. 1961

Case No. 61-179

JAMES RUSSELL ROBINSON, et al., Petitioners,

vs.

THE STATE OF FLORIDA, Respondent.

OPINION—Filed September 21, 1961

This cause was transferred to the Supreme Court of Florida by an order dated April 25, 1961. The Supreme

Court's decision was rendered on July 14, 1961, retransferring the cause to this court.

We have considered the petition for certiorari and opinion of the Supreme Court of Florida in connection with the jurisdictional question involved and herewith adopt as the opinion and judgment of this court the opinion and judgment of the Supreme Court of Florida rendered July 14, 1961, case #40,039.

Accordingly, the petition for certiorari is granted and the questioned order of the circuit court is quashed. It is so ordered.

[fol. 77]

IN THE DISTRICT COURT OF APPEAL OF FLORIDA

THIRD DISTRICT

July Term, A.D. 1961

[Title omitted]

OPINION—Filed December 4, 1961

This court, on September 21, 1961, quashed an order of affirmance entered by the circuit court in this cause. The petitioners, after the quashal of the circuit court's order of affirmance, moved, inter alia, for a transfer of the appeal from the circuit court to the Supreme Court of Florida. This motion was denied and the appeal in the circuit court was dismissed. It is the latter order of which the petitioners complain.

This court, after hearing oral argument, concludes that the cause should be transferred by the circuit court to the Supreme Court of Florida in accordance with the applicable statute and the appellate rule. In reaching this conclusion, we should point out, in fairness to the trial judge, that no such directions were contained in this court's order quashing the circuit court's order of affirmance.

Accordingly, this cause is remanded to the circuit court with the request that the trial judge transfer the appeal and all the papers in connection therewith, to the Supreme Court [fol. 78] of Florida, in accordance with the opinion of that court rendered July 14, 1961. It is so ordered.

[fol. 79]

IN THE SUPREME COURT OF FLORIDA

July Term, A. D. 1962

JAMES RUSSELL ROBINSON, et al., Appellants,

vs.

THE STATE OF FLORIDA, Appellee

OPINION—Filed September 19, 1962

This case finally reaches us by an order of the Circuit Court of the Eleventh Judicial Circuit transferring an appeal from a judgment of the Criminal Court of Record of Dade County which passed upon the validity of a state statute.

The case traveled here by a circuitous and devious route which is not approved and which should be meticulously avoided in the future. See, Robinson v. State, Fla. 1961, 132 So. 2d 3.

Robinson and others were found to be guilty of a misdemeanor in the Criminal Court of Record of Dade County. In denying a motion for a directed verdict at the conclusion of the evidence, the trial judge expressly sustained the validity of Section 509.141, Florida Statutes. The cited statute makes it a misdemeanor for a person to refuse to leave a restaurant after being requested so to do. The judgment of the criminal court was appealed to the circuit court. It should have been brought directly here under Article V, Section 4, Florida Constitution, which provides for direct appeal to this Court from final judgments of trial courts "directly passing upon the validity of a state statute." Evidently, this provision was never brought to the attention of the circuit judge. Moreover, [fol. 80] pursuant to requirements of the Constitution this Court has adopted Florida Appellate Rule 2.1a(5)(d), which reads in part as follows:

> "When the jurisdiction of an appellate court has been improvidently invoked, that court may of its own motion or on motion of either party to the cause enter an order transferring it to the court having jurisdiction.. . ."

In the instant case the circuit court sat as an appellate court. Florida Appellate Rule 1.3. It is evident that the provisions of the foregoing rule were not invoked when this matter was originally before the circuit court in the exercise of its appellate jurisdiction. At that time the case should have been transferred immediately to this Court. In fact, it never should have been taken to the circuit court in the first instance. Robinson v. State, supra. Instead of being brought here directly as the Constitution contemplates, the appeal took a tortuous route through the circuit court, thence by petition for certiorari to the District Court of Appeal which transferred to us the petition for certiorari. Whereupon, we were compelled, State v. Robinson, supra, to transfer the matter back to the District Court which in turn remanded it to the circuit court, which finally sent the original appeal to this Court where it should have been at the beginning of the appellate process.

Were we to condone this procedure it would be an invitation to litigants to ignore completely the requirements of the Constitution governing appeals. Litigants could merely follow the course which seemed to them to be most desirable, by selecting the appellate court of their own [fol. 81] choice with the hope of finding somewhere along the line a decision suiting their desires.

In cases of the type now before us, the circuit court at the outset had no jurisdiction to do anything but transfer the appeal here. Instead, it proceeded to attempt to exercise complete appellate jurisdiction. Under the procedure followed in this case we would doubtless be justified in dismissing this appeal on the ground that the appellants had elected to proceed to a conclusion in the wrong forum instead of seeking the benefit of Rule 2.1a(5)(b), and thereby getting on the right track to move forward to final adjudication in the forum which had the power to proceed.

However, inasmuch as the case is now finally here, we will proceed to dispose of it because we do have jurisdiction. We have included the foregoing discussion for the guidance of the Bar in the future, in the hope that there will be no repetition of the procedure which was undertaken in the instant case.

We find it unnecessary to engage in any prolonged discussion of the merits of the case. The sole point presented is the matter of the validity vel non of Section 509.141, Florida Statutes. We have concluded, as did the trial judge, that the statute is nondiscriminatory and that it reflects a valid exercise of the legislative power of the State of Florida. Having so concluded, we find no reason to disturb the judgment of the Criminal Court of Record here under assault.

It is, therefore, affirmed.

It is so ordered.

[fol. 82]

IN THE SUPREME COURT OF THE STATE OF FLORIDA

Case No. 31,723

JAMES RUSSELL ROBINSON, JOSEPH PRICE PERKINS, MARVIN EDISON ROBINSON, THOMAS VAWN ROLAND, JAMES H. LANE, THOMAS WALTER GITHER, BARRY M. COHEN, ANGELINE E. BUTLER, HENRY PRINGLE, BERNARD LAFAYETTE, OLIVER WILLIAM ST. PEE, LEON EVERETT BAILEY, DOROTHY R. MILLER, PATRICIA STEPHENS, PRICILLA STEPHENS, ALICE M. PARHAM, ROBERT PAUL YOUNG, DR. CARL ELLIOTT YEAGER, JR., Appellants,

v.

THE STATE OF FLORIDA, Appellee.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed December 3, 1962

I.

Notice Is Hereby Given that James Russell Robinson, Joseph Price Perkins, Marvin Edison Robinson, Thomas Vawn Roland, James H. Lane, Thomas Walter Gither, Barry M. Cohen, Angeline E. Butler, Henry Pringle, Bernard Lafayette, Oliver William St. Pee, Leon Everett Bailey, Dorothy R. Miller, Patricia Stephens, Pricilla Stephens, Alice M. Parham, Robert Paul Young, Dr. Carl Elliott Yeager, Jr., the Appellants above named, hereby appeal to the Supreme Court of the United States from the Order and Opinion of the Supreme Court of Florida in the above styled cause, filed September 19, 1962, wherein the Supreme Court of Florida affirmed the judgment of the Criminal Court of Records in and for Dade County, Florida and sustained the validity of Florida Statutes Section 509.141(3).

This appeal is taken pursuant to 28 U.S.C. Section 1257(2).

II.

The Clerk of the Supreme Court of Florida will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

1. Information filed August 19, 1960
2. Argument, pleas of not guilty and waivers of jury trial (Minutes of Clerk) filed August 22, 1960
3. Trial (Minutes of Clerk) of August 26, 1960

[fol. 83] 4. Oral Motion for Directed Verdict and Order Denying Motion (Minutes of Clerk) of August 26, 1960

5. Order granting probation as to Defendant James Russell Robinson dated August 26, 1962
6. Clerk's recitation of entry of Orders granting probation as to the Defendants dated August 26, 1960
7. Notice of Appeal to Circuit Court for the Eleventh Judicial Circuit in and for Dade County, filed September 21, 1960
8. Assignment of Errors to the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, filed September 21, 1960
9. Directions to Clerk for preparing transcript of record on appeal dated October 19, 1960
10. Reporter's transcript of testimony and proceedings at trial held August 26, 1960
11. Index to reporter's transcript
12. Certificate of the Court reporter
13. Certificate of the Clerk of the Criminal Court of Record in and for Dade County, Florida dated October 27, 1960
14. Order Affirming Judgment and Sentence Appealed from, entered by the Circuit Court of the Eleventh

Judicial Circuit in and for Dade County, Florida, Criminal Appeal Case No. 5041 entered by Hon. Robert H. Anderson, Circuit Judge on January 27, 1961

15. Petition for Rehearing filed in said Circuit Court on or about February 21, 1961

16. Order of said Circuit Court denying said Petition for Rehearing, dated February 22, 1961 entered by Hon. Robert H. Anderson, Circuit Judge

* * * * * * *

[fol. 84] 18. Order of District Court of Appeal transferring case to Supreme Court of Florida dated April 18, 1961

19. Opinion of Supreme Court of Florida filed July 14, 1961

20. Opinion of District Court of Appeal filed September 21, 1961

21. Opinion of District Court of Appeal filed December 4, 1961

* * * * * * *

24. Opinion and Order of the Supreme Court of Florida affirming the judgment of the Criminal Court of Record, dated September 19, 1962, Case No. 31,723

25. This Notice of Appeal

III.

The following question is presented by this appeal:

Where Negroes and white persons in association with them remain in a restaurant after the manager thereof has refused to serve them and has requested them to leave the premises, and when the manager's refusal to serve and request to leave is based upon the fact that these persons are Negroes or in association with Negroes, and when the police at the manager's request, arrest these persons because of their refusal to comply with the manager's request to leave the premises, is the arrest and subsequent conviction of these persons for alleged violation of Florida Statutes Sec.

509.141(3) a violation of the due process and equal protection clauses of the 14th Amendment to the Federal Constitution and a violation of the privileges and immunities of State and Federal Citizenship guaranteed by the Federal Constitution?

Tobias Simon, Attorney for Appellants, 706 Ainsley Building, Miami 32, Florida.

[fol. 86] Clerk's Certificate (omitted in printing).

[fol. 87]

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA, THIRD DISTRICT

Case No. 61-179

PETITION FOR WRIT OF CERTIORARI

To the District Court of Appeal of Florida, Third District:

Petitioners, by and through their undersigned counsel, present this, their Petition for Writ of Certiorari and state:

1. Petitioners seek to have reviewed an Order of the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida dated the 27th day of January, 1961 and recorded in the records of said Court on the 30th day of January, 1961 in the Circuit Court Appeal Minutes Book 451, page No. 312, and an Order denying the Re-hearing of said Court dated the 22nd day of February, 1961 and recorded in the records of said Court on the 23rd day of February, 1961 in the Circuit Court Appeal Minutes Book 451, page No. 352.

2. This Petition is presented under and pursuant to Article V, Section 5 (3) of the Florida Constitution and Rule 4.5(c) of the Florida Appellate Rules.

3. This Petition is accompanied by a certified transcript of the record of the proceedings, including the decision Petitioners seek to have reviewed, and a supporting Brief.

[fol. 88] 4. The following are the facts of the case:

(a) The State of Florida charge in an information filed against Petitioners that they did on August 17, 1960 in Miami, Florida:

> "unlawfully remain or attempt to remain in a restaurant after being requested to depart therefrom in violation of Section 509.141 (3), Florida Statute, in that the above-named defendants at the aforesaid time and place did then enter the premises located at 5941 Northwest 7th Avenue, in the County and State aforesaid, said premises being then and there owned and operated by SHELL CITY INC., a Florida Corporation, and which said premises were then and there being operated as a restaurant under the name SHELL CITY RESTAURANT; that the above named defendants did then and there seat themselves as guests at tables in the aforesaid restaurant; and that said above-named defendants did then and there unlawfully remain or attempt to remain in the aforesaid restaurant after said above-named defendants had been requested to depart there-from by the manager, assistant manager, or other person in charge or in authority of the aforesaid restaurant, said manager, assistant manager, or other person in charge or in authority of the aforesaid restaurant being then and there of the opinion that if the above-named defendants were entertained or served it would be detrimental to the said restaurant, contrary to the form of the Statute in such cases made and provided, and against the peace and dignity of the State of Florida." (R. 2, 3)

For purposes of these certiorari proceedings, Petitioners admit the material allegations of fact alleged by the State in its information, above.

(b) Petitioners constituted a party Negro and White persons, and the management of the Shell City Restaurant admitted that the reason it refused to serve Petitioners and requested them to leave is that it did not serve Negroes nor did it serve White persons in company with

Negroes, and that, therefore, it had Petitioners expelled from the restaurant by the police because of this policy of racial discrimination. (R. 40, 50-53)

[fol. 89] (c) Trial was held before the Honorable George E. Schulz, Judge of the Criminal Court of Record in and for Dade County, on August 26, 1960. Following the presentation of the State's case, Petitioners moved for a judgment of acquittal, but their motion was denied. (R. 61) The Petitioners presented no evidence. The Trial Court then entered judgment pursuant to Chapter 948, Florida Statutes, wherein the Court ordered that an adjudication of guilt and the imposition of sentence be stayed and withheld, and placed Petitioners on probation for terms of one year each.

5. On the foregoing facts the Courts below were presented with the following point of law:

> "Where Negroes and white persons in association with them remain in a private restaurant after the manager thereof has refused to serve them and has requested them to leave the premises, and when the manager's refusal to serve and request to leave is based upon the fact that these persons are Negroes or in association with Negroes, and when the police at the manager's request, arrest these persons because of their refusal to comply with the manager's request to leave the premises, is the arrest and subsequent conviction of these persons for alleged violation of F.S. Sec. 509.141 (3) a violation of the due process and equal protection clauses of the 14th Amendment to the Federal Constitution and a violation of the privileges and immunities of state and federal citizenship guaranteed by the Federal Constitution?"

On this point of law both the Trial Court and the Circuit Court ruled that there was no violation of Petitioners' rights claimed under the Federal Constitution.

6. Petitioners submit that the foregoing point of law must be answered in the affirmative in view of the decision of the United States Supreme Court in *Shelley* v.

Kraemer, 334 U.S. 1, 68 S.Ct. 836, 92 L. Ed. 116 (1948), wherein the Court announced the principle that no arm of any State government may lend its coercive power to the effectuation of any private policy or program of racial discrimination.

[fol. 90] Wherefore, Petitioners request this Court to grant a Writ of Certiorari and enter its Order quashing the Orders of the Circuit Court below and quashing the judgments of the Criminal Court of Record below, and granting such other and further relief as should seem right and proper to the Court.

[fol. 92]

IN THE SUPREME COURT OF FLORIDA

No. .....

Appeal from the Criminal Court of Record of Dade County, Florida.

MOTION OF APPELLEE TO DISMISS THE APPEAL

Comes now the State of Florida, appellee herein, by the State Attorney and shows to the Court that:

1. On the 26th day of August, A. D. 1960, appellants were found guilty in the Criminal Court of Record in and for Dade County, Florida, of the charge of Unlawfully Remaining In A Restaurant After Having Been Requested To Leave and that the said Court entered an order and judgment that "an adjudication of guilt and the imposition of sentence be, and the same are hereby, stayed and withheld and the defendant, James Russell Robinson, is hereby placed on probation in the custody of the probation officer of this Court for the term of one year", and that on the same day, to-wit: the 26th day of August, A. D. 1960, the said Court entered an identical order with respect to each of the co-defendants in said case, namely, Joseph Price Perkins, Marvin Edison Robinson, Thomas Vawn Roland, James H. Laue, Thomas Walter Gaither, Barry M. Cohen, Angeline E. Butler, Henry Pringle, Bernard Lafayette, Oliver William St. Pee, Leon Everette Bailey, Dorothy

R. Miller, Patricia Stephens, Pricilla Stephens, Alice M. Parham, Robert Paul Young and Dr. Carl Elliott Yeager, Jr., which said orders granting probation were recorded in the minutes of said Criminal Court of Record in Minute Book No. 25 on pages 3, 4, 5, 6, 8, 9, 11, 13, 15, 16, 18, 19, [fol. 93] 21, 23, 25, 27 and 29 respectively as shown by the transcript of the record at pages 13 and 14.

2. The said period of probation of one year fixed in the aforesaid orders expired on the 26th day of August, A.D. 1961;

3. The statute which the appellants were found guilty of violating is Section 509.141, F. S. A., and said statute provides in sub-section (3) thereof that violators thereof shall be guilty of a misdemeanor but does not provide any specific punishment therefor and that under Section 775.07, F. S. A., the punishment for misdemeanors, when not otherwise provided by statute, is by a fine not exceeding $200.00 or imprisonment not exceeding 90 days.

4. In consequence of the foregoing, that is to say, because the time within which the said Criminal Court of Record could impose a sentence expired 90 days after the 26th day of August, A. D. 1960, on which date the appellants were found guilty except that such time was extended by the said order placing appellants on probation for a period of one year from said 26th day of August, A. D. 1960, and the said period of probation expired on the 23rd day of August, A.D. 1961. The said Criminal Court of Record has lost its power and jurisdiction to impose any sentence on appellants and to take any further action in said cause.

Wherefore, appellee moves the Supreme Court to dismiss the appeal herein on the ground that said appeal is moot.

[fol. 94]

IN THE SUPREME COURT OF FLORIDA

January Term, A. D. 1962

Tuesday, February 6, 1962

JAMES RUSSELL ROBINSON, et al., Appellants,

vs.

THE STATE OF FLORIDA, Appellee.

The motion of the appellee to dismiss the appeal in the above cause has been considered and is denied.

[fol. 95]

SUPREME COURT OF THE UNITED STATES

No. 748—October Term, 1962

JAMES RUSSELL ROBINSON, et al., Appellants,

vs.

FLORIDA.

ORDER NOTING PROBABLE JURISDICTION—June 10, 1963

Appeal from the Supreme Court of the State of Florida.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is placed on the summary calendar.

June 10, 1963